

PHILIP SHROPSHIRE,)
)
) **Plaintiff,**)
)
) **vs.**)
) **CHRIS GALLAWAY, ZACHARY**) **C.A. No. 2:17-cv-00935-DSC**
) **REIDER and FIELDWORKS, LLC,**)
) **Defendants.**) **ELECTRONIC FILING**

Defendants, FieldWorks, LLC (“FieldWorks”), Chris Gallaway (“Gallaway”) and Zachary Reider (“Reider”) (collectively, “Defendants”), by their attorneys, Cohen & Grigsby, P.C., file the following Defendants’ Reply to Plaintiff’s Response to Defendants’ Motion to Dismiss, and in support thereof state as follows:

2. Plaintiff's response and brief in opposition was required to be filed on or before May 16, 2019. (Doc. No. 31).

4. “A party may not rely on new facts in submissions in response to a motion to dismiss to defeat the motion.” Gueson v. Feldman, No. CIV.A. 00CV1117, 2002 WL 32308678, at *4 (E.D. Pa. Aug. 22, 2002), *aff’d* sub nom. Gueson v. Sheppard, 85 F. App’x 870 (3d Cir. 2003). If a plaintiff attempts to assert additional facts for the first time in their response to a motion to

dismiss, it is considered an improper pleading. Id. (Granting the Defendant's motion to dismiss after finding that Plaintiff's attempt to argue new facts in its response as improper).

5. Plaintiff's Response improperly relies upon additional facts not provided in his Second Amended Complaint, which Defendants' Motion to Dismiss is based upon.

6. The Court should not consider the new facts asserted in Plaintiff's Response and should only rely upon the facts properly alleged within Plaintiff's Second Amended Complaint.

7. Moreover, the Local Rules for the United States District Court for the Western District of Pennsylvania only requires the filing of a responsive Concise Statement of Material Facts if the court is examining a motion for summary judgment. LCvR 56(C)(1). There is no pending summary judgment motion in this case.

8. Accordingly, Defendants move that this Court not consider the Plaintiff's statement of material facts.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Honorable Court does not consider Plaintiff's Response to Defendant's 4.16 Statement and Statement of Material Facts in its motion to dismiss decision.

Respectfully submitted,

/s/ Jennifer S. Park

Jennifer S. Park

PA I.D. 205842 / jpark@cohenlaw.com

Alex M. Lacey

PA I.D. 313538 / alacey@cohenlaw.com

Kelsey J. Gdovin

PA I.D. 322715 / kgdovin@cohenlaw.com

COHEN & GRIGSBY, P.C.

625 Liberty Avenue

Pittsburgh, PA 15222-3152

412-297-4900 / Fax 412-209-0672

Counsel for Defendants

Dated: May 30, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendants' Reply to Plaintiff's Response to Defendants' Motion to Dismiss was filed electronically on May 30, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Jennifer S. Park